PROPOSED JOINT VENTURE AND LEASE GUIDELINES FOR PURELY COMMERCIAL ARRANGEMENTS FOR LOCAL UNIVERSITIES AND COLLEGES
(Patterned after a similar set of Guidelines earlier adopted by the Bureau of Corrections and the Philippine National Oil Company)

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1. RATIONALE

WHEREAS, the (name of LUC), pursuant to (policy/ law/ ordinance), is a local university or college (LUC), established to (mandate);

WHEREAS, the LUC is the titled owner or has in its legal possession tracts of land located in (location);

WHEREAS, the LUC intends to maximize the value of its properties in order to generate revenues for its operations, programs, and initiatives through Public-Private cooperative arrangements.

WHEREAS, Section 20, Article II of the 1987 Constitution "recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments";

WHEREAS, pursuant to Section 4 of Republic Act No. 11966, otherwise known as the PPP Code of the Philippines, government agencies can enter into Joint Venture (JV) and lease arrangements. However, the PPP Code excludes JVs and leases which are purely commercial in nature that neither provide nor include public infrastructure or development services that are used by the public; and

WHEREFORE, the LUC hereby issues these Guidelines for JVs and leases with Private Proponents for purely commercial in nature and for infrastructure and development projects not used by the public.

2. OBJECTIVES

2.1. To prescribe the rules, regulations, guidelines, and procedures in entering into JVs and leases with Private Proponents for projects or undertakings which are purely commercial with respect to the LUC's properties located in (location) and such other properties which may be acquired by or donated to it in the future;

2.2. To maximize the value of the LUC properties and facilities through the proper use, development, disposition, and operations thereof;

2.3. To encourage the participation of Private Proponents possessing expertise and technical capabilities in property, facilities, and project development, and in operations and management, to enter into JVs and leases with the LUC;

2.4. To make JVs and leases with the private sector a viable, efficient, and practical alternative in pursuing the development goals of the LUC; and

2.5. To ensure that all JVs and leases are entered into by the LUC through an open, fair, objective, transparent, and competitive procedures that promote accountability in government transactions.

3. DEFINITION OF TERMS

3.1. Comparative Proposal – a competing financial offer submitted by an eligible third-party Private Proponent or Challenger in response to an unsolicited proposal that has already been negotiated between the LUC and an Original Proponent (OP).

3.2. Competitive Challenge – a procedure in which an unsolicited proposal is challenged by inviting third parties to submit superior or more advantageous counter-proposals within a defined period.

3.3. Competitive Selection – a procurement process in which a project is openly bid out to all interested and qualified proponents, ensuring the most responsive and best value-for-money option through transparent competition.

3.4. Consortium – an association of two or more independent entities that combine resources, expertise, or capital to undertake a specific project, without necessarily forming a new juridical entity. The eligibility of the consortium shall be determined collectively, by aggregating the qualifications of its members, subject to law and their agreement.

3.5. Contractual Joint Venture – a legal and binding agreement under which the the LUC and its JV partner shall agree to jointly undertake a project without creating a separate juridical entity, with rights, functions, and obligations governed solely by the JV Agreement.

3.6. Equity or Asset Share – refers to the LUC's proportionate interest in the land, development, or facilities constructed under the JV or lease agreement.

3.7. Invitation to Apply for Eligibility and to Submit a Comparative Proposal (IAESCP) – a public call for other companies to submit competing offers against an unsolicited proposal.

3.8. Joint Venture (JV) – a contractual arrangement where both the LUC and a Private Partner pool resources comprising of capital, services, or assets, including equipment, land or intellectual property, to jointly undertake a purely commercial arrangement within a specific period of cooperation, whether under a contractual JV or incorporated JV.

3.9. JV Company – a separate juridical entity formed as a stock corporation – incorporated and registered in accordance with the provisions of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, formed by the LUC and a Private Partner to jointly undertake a specific project or business, with ownership, control, profits, dividends, losses, and risks shared proportionately according to their respective equity.

3.10. Lease – a contractual arrangement whereby the LUC, as owner or administrator of government lands and facilities under its jurisdiction, grants a Private Partner-Lessee the right to use or develop such property for a specified period and specific purposes, in exchange for fixed or revenue-based rental payments or other agreed considerations, without transferring ownership.

3.11. Original Proponent (OP) – the Private Proponent whose unsolicited proposal has been accepted by the LUC and who is granted the right to match superior offers during the competitive challenge, if any.

3.12. Original Proponent Status – the formal recognition granted to a Private Proponent whose unsolicited proposal has been accepted by the LUC, giving it exclusive right to negotiate the project terms and protecting it from competing proposals until such time as the negotiations fail.

3.13. Private Proponent – any individual, partnership, corporation, firm, or consortium, whether local or foreign, that submits a proposal or participates in a joint venture or lease arrangement for purely commercial arrangements with the LUC.

3.14. Revenue-Based Rent – a rental scheme wherein the LUC receives a share or fixed percentage of the lessee's gross revenues or net profits from the commercial use of its property.

3.15. Right to Match – the privilege granted to the Original Proponent of an unsolicited proposal allowing it to match or equal the most superior offer made by a challenger during the competitive challenge process, if any, in order to secure the award of the project.

3.16. Unsolicited Proposal – a project proposal initiated by a Private Proponent without a published invitation from the LUC.

3.17. Winning Private Proponent or Private Partner – refers to the entity that successfully passes all stages of the selection or competitive process and is awarded the contract for a joint venture or lease for purely commercial arrangement involving the LUC property.

4. OVERALL POLICY

The LUC shall enter into JVs and leases with Private Proponents for purely commercial arrangements consistent with the following principles and parameters:

4.1. The JV or lease activity shall be consistent with and in furtherance of the mandate and authority of the LUC under (policy) and other relevant policies, laws, executive orders, rules and regulations, and applicable jurisprudence;

4.2. The JV or lease activity shall maximize the value of the LUC properties in order to generate revenues for its operations, programs, and initiatives while providing reasonable returns for the Private Proponents;

4.3. JV and lease activities of the LUC are imbued with public interest and are aimed at providing better quality of life for Filipinos;

4.4. The JV partners and lessees of the LUC shall be private entities, whether local or foreign, authorized to conduct business in the Philippines subject to relevant laws and regulations; and

4.5. JVs and leases shall not involve any divestment, disposition, or transfer of ownership of the LUC land and assets. All permanent improvements, structures, and facilities introduced, constructed, or installed by the private proponent under such arrangements shall, upon expiration or termination of the contract, automatically transfer to and become the property of the LUC, without need of further deed and without compensation, unless otherwise expressly provided in the contract.

5. SCOPE: PURELY COMMERCIAL ARRANGEMENTS

5.1 The LUC Guidelines shall apply to JVs and leases between the LUC and Private Proponents.

a) Involving purely commercial arrangements that neither provide nor include public infrastructure or development services that are used by the public;

b) For projects such as, but not limited to, hotels and motels, shopping malls, paid parking, commercial office spaces, restaurants, food courts, private banks, private buildings, conference facilities, exhibition halls, retail or wholesale spaces, casinos, industrial or warehouse spaces, logistics centers, gas stations, condominium development, entertainment centers, non-socialized housing units, commercial sports facilities, health and wellness facilities, theme parks, real estate development, and other similar arrangements with no public infrastructure or development services that are used by the public;

c) For projects or activities where the LUC shall not charge any tariff or user fees by the end users or the public;

d) In arrangements where the use or entitlement of the LUC over the properties or a portion thereof is the consideration under the JV or lease contract; and

e) Where the property or activity will have no component falling under eligible projects under the PPP Code and its Implementing Rules and Regulations (IRR).

5.2 For PPP arrangements covered under the PPP Code or the Guidelines, the former is the governing law, not the Guidelines. Interpretations of the Guidelines and provisions hereof relevant to the aforesaid coverage are subject to the approval of the LUC Board.

5.3 JVs and leases under the Guidelines shall have a minimum term of five (5) years and a maximum term of ninety-nine (99) years, as may be justified by the terms, nature, and objectives of the project, including the period necessary for recovery of investments. JVs and leases with a term of less than five (5) years shall not be covered by the Guidelines.

6. APPLICATION OF PROCEEDS

The proceeds derived from these commercial arrangements shall be allocated and utilized by the LUC for the following purposes and programs:

6.1 (number) percent (number %) – To (purpose);

6.2 (number) percent (number %) – To (purpose); and

6.3 (number) percent (number %) for such other activities as may be determined by the LUC Board.

7. PROCEDURES

7.1. Selection Committee

a) The LUC shall create a Selection Committee (SC), which shall, at the minimum, be composed of the following:

i. Chairperson – the Administrator or at least a third ranking permanent LUC official
ii. LUC Treasurer or Accountant
iii. LUC Planning and Development Coordinator or Engineer
iv. LUC Legal officer
v. A representative from and selected by the LUC Board designated through a resolution

The Committee Secretariat shall be created by the SC itself.

The LUC Board may invite observers from government agencies and may create a Technical Working Group (TWG) or engage consultants to assist the SC.

b) The SC shall be responsible for:

   i. All aspects of the pre-selection and selection process, including but not limited to the preparation of selection or tender documents, publication of the invitation to apply for eligibility and to submit a proposal, pre-qualification of prospective Private Proponents, conduct of the pre-selection conference and issuance of supplemental notices, interpretation of rules regarding the selection process, conduct of the selection process, evaluation of financial and technical proposals, resolution of disputes between and among Private Proponents, and recommendation for the acceptance of the proposal or the award of the contract; and

   ii. The processing of unsolicited proposals, from the receipt of proposals, the initial evaluation, and all other steps until rejection or contract award.

c) The LUC may select Private Proponents either through competitive selection, negotiated mode, or competitive challenge. The LUC must ensure that the process of selection, awarding, and approval are conducted in a transparent and competitive process that promotes accountability and efficiency through publication of the relevant terms and conditions of the competitive selection, negotiations, or competitive challenge.

7.2. Procedure for Entering into JVs and Leases

Prior to entering into an agreement, the proposed JV or lease activity shall comply with the following conditions:

a) The proposed JV or lease activity and proposed agreement should comply with provisions at Nos. 3, 5, and 6 hereof;

b) Clear description of the proposed project, its activities, objectives, source(s) of funding, extent, and nature of the proposed participation of the LUC, period of participation of the LUC, and the relevant terms and conditions of the undertaking under the proposed agreement, among others;

c) Indication of the responsiveness of the proposed JV or lease activity in meeting the LUC's development goals and objectives;

d) Presentation of all components of the arrangement and agreement, including the technical, financial, economic, legal, and other aspects in determining the over-all feasibility of the proposed JV or lease activity, among others;

e) Compliance with relevant clearance or approval requirements from other government agencies or offices unless these can be obtained after the Notice of Award and before the Notice to Proceed; and

f) Appraisal of the LUC properties, assets, and facilities that shall be the subject of the JV or lease.

7.3. Modes of Selecting a Private Partner

The manner of selecting the Private Proponents may either be through:

a) Competitive Selection – In the conduct of the Competitive Selection process, The LUC shall ensure the following:

i. All activities during the competitive selection, awarding, and final approval are conducted in a transparent and competitive process that promotes accountability and efficiency; and

ii. The competitive selection parameters are clearly defined and shall include the parameters as approved by the LUC Board.

b) Negotiated Mode – Negotiated JVs or leases may be entered into under the following circumstances:

i. When the LUC receives and subsequently accepts an unsolicited proposal; or

ii. When there is failure in the competitive selection.

7.4. Competitive Selection, Negotiated Mode, and Competitive Challenge Procedure

a) Competitive Selection. The process for the conduct of Competitive Selection, contract award and final approval shall be as follows:

i. Selection/Tender Documents. The SC is responsible for the preparation of the selection/tender documents appropriate for the mode of selection and the particular project. These may include:

1. Instructions to Private Proponents. This contains the following:

    a. General description and objectives of the JV or lease activity;
    b. Contractual arrangement;
    c. Proposal submission procedures and requirements;
    d. Amount, form, and validity period of proposal security;
    e. Milestones;
    f. Method, parameters, and criteria for the evaluation of the proposals;
    g. Minimum amount of equity required from the Private Proponents;
    h. Requirements of concerned regulatory bodies/agencies as may be pertinent or applicable to the JV or lease activity: revenue sharing arrangement, dividends policy, if any; and
    i. Rental arrangement for lease, and nationality and ownership requirements as required by law.

2. Minimum Design, Performance Standards/Specifications. This shall include the following:

    a. Project scope;
    b. Contractual arrangement;
    c. Contract duration;
    d. Rights and obligations of each party;
    e. Performance standards;
    f. Safeguards;
    g. Revenue share or rental scheme;
    h. Government undertakings;
    i. Risk allocation;
    j. Contingent liabilities;
    k. Bid parameter;
    l. Ceiling for debt-to-equity ratio;
    m. Appropriate environmental standards; and
    n. Other standards set by the LUC and other concerned regulatory agencies as may be pertinent or applicable to the JV or lease activity.

3. Financial and Economic Parameters. For purposes of evaluating JV or lease proposals, the following economic parameters, among others and where applicable, shall be prescribed:

    a. Discount rate, foreign exchange rate, and inflation factor;
    b. Maximum period of project construction;
    c. Fixed term and price indices to be used in the adjustments of tolls/fees/rentals/charges;
    d. Internal rate of return;

e. Economic net present value;
f. Benefit cost-ratio; and
g. Minimum period of repayment.

4. Feasibility Study or Pre-feasibility Study of the Proposed Project. The study should embody the following:

    a. Project definition and statement of objectives;
    b. Project description;
    c. Project context, expected outcomes, and key performance indicators;
    d. Project cost;
    e. Legal due diligence;
    f. Demand and supply/market analysis;
    g. Financial and economic analysis;
    h. Social and environmental analysis;
    i. Risk allocation;
    j. Justification for contractual arrangement; and
    k. Such other relevant information.

5. Draft Contract. This reflects the terms and conditions in undertaking the JV or lease activity, including the contractual obligations of the contracting parties and the ownership of the JV or lease activity, project, or property after the termination of the JV or lease. The draft contract shall include provisions on the following matters, as far as practicable:

    a. Clearly defined purpose and objectives, term, and scope of the JV or lease;
    b. Total cost of the JV or lease activity, project, specifications and features;
    c. The relationship between the parties, management roles in the JV or lease activity, and a statement that the parties, under a JV, are co-venturers for the project, whether or not the contract is in the name of all members;
    d. Incorporated JVs, the establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under proportionate control and all progress payments and other revenues being deposited in such account;
    e. Where applicable, procedures for additional capital infusions, if required;
    f. Where applicable, under a JV, a declaration of the participation of the parties and percentage in which profits

and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise. The LUC shall be entitled to a share in the dividends, profit, income, and revenues higher than what it contributes. The share of the LUC from the profits and revenues shall in no case be less than the value of its contribution. The LUC shall not bear a risk or loss higher than what it contributes but may bear a lower risk and percentage loss than what it contributes;

g. For JVs, definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of JV, and specified division of the profits, risks, and losses;
h. Performance security requirement of the project by the Private Proponent;
i. For JVs, undivided pro-rata interests held by the co-venturers on all assets of the JV;
j. For JVs, restriction regarding assignment of Private Proponent's undivided pro-rata interests in assets of the JV;
k. For JVs, procedure or period for withdrawal by the government entity of its contribution to the JV, or the exit of divestment by the government entity of its interest in the JV, and substitution or addition of parties;
l. For leases, a description of the Rental Schemes. The rental consideration for leases may be structured in any of the following schemes, or a combination thereof, as may be most advantageous to the LUC:

    1) Fixed Rent – periodic rental payments at a predetermined rate, which may be subject to escalation or indexation;
    2) Revenue-Based Rent – a share in the gross revenues, net profits, or other financial returns of the lessee;
    3) Equity/Asset Share – a proportionate share or interest in the land development or facilities constructed thereon; and
    4) Other Acceptable Arrangements – such as hybrid rent (fixed plus variable), in-kind contributions, build-to-suit or build-and-transfer schemes, through put-based rent, or any other mode.

m. In lease arrangements, the LUC shall not bear any risk or loss. The considerations specified above are guaranteed under the contract and shall not be diminished by any circumstance affecting the lessee;

n. The rent shall commence or consideration shall become due upon turnover of the property to the lessee, unless an earlier period is expressly specified in the contract or a grace period is provided therein;
o. The lease contract shall provide for security deposits, advance rentals, and such other payments or guarantees as may be mutually agreed upon by the parties, taking into account the nature, objectives, and terms of the lease;
p. All national and local taxes, fees, and charges arising from or relating to JV and lease arrangements shall be solely for the account of the Private Partner. Such taxes shall not be deducted from, nor reduce, the profits, revenues, rental payments, or any other share due to the LUC. All amounts payable to the LUC under the contract shall be on a gross-of-taxes basis. In case any tax is imposed on such payments, the Private Partner shall shoulder and pay the same, ensuring that the LUC receives the full amount net of any tax deduction or withholding;
q. Specified termination of the JV or lease, buy-out provisions, and details on the transfer of ownership of the JV or lease activity/facility including provisions on what happens to the JV or leased assets/improvements after the expiration of the agreement or end of the JV or lease period. For leases, the LUC shall own all improvements introduced by the lessee at the end of the contract period. If equity other than cash is to be contributed, a statement as to how the property will be appraised and valued, and the ownership thereof, during and after the effectivity of the agreement;
r. Implementation milestones, regular meeting, schedules, and financial and periodic progress reporting procedure;
s. Where applicable, cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether they are in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valuated, the minimum value of asset, and the determination/selection of asset such as how and who will determine/select the asset;
t. Indemnification and liquidated damages;
u. Performance and warranty bonds;
v. Minimum Insurance Coverage;
w. Acceptance tests and procedures;

x. Validity of the performance security, warranty period and procedures;
y. Grounds for and effects of contract termination/default including modes for setting disputes, procedure for handling guarantees, defects and insurance after termination, and threshold (in terms of amount, time/period, or both) for which non-payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV or lease contract/agreement;
z. The manner and procedures for the resolution of warranty against corruption;
aa. Compliance with all other laws, rules, and regulations;
bb. Payout of funds;
cc. Dispute resolution clause; and
dd. The contract period which shall not exceed ninety-nine (99) years. Provisions for renewal may be incorporated in the JV or lease contracts, subject to written agreement of the parties, provided that the total cumulative term, inclusive of renewals, shall in no case exceed ninety-nine (99) years, and that the terms of reference for the project provides for such option to renew.

6. Selection Form reflecting the required information to properly evaluate the technical and financial proposal;

7. Forms of technical and financial proposals and performance securities; and

8. Other documents as may be required by the SC and other requirements of concerned regulatory agencies as may be pertinent or applicable to the JV or lease activity.

7.5. Publication of Invitation to Apply for Eligibility and to Submit a Proposal (IAESP). The IAESP shall be advertised in one (1) newspaper of general nationwide circulation, and posted continuously at the website of the LUC starting on the date of advertisement until acceptance. Interested Private Proponents shall be given thirty (30) calendar days from the last date of publication to apply for eligibility and to submit a proposal. Notwithstanding, the LUC may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV or lease activity; provided, that the principles of transparency, competition, and accountability are observed.

7.6. Qualifications of Private Proponents. Any individual, partnership, corporation, firm, or consortium, whether local or foreign, may participate subject to the limits set herein:

a) Legal Capacity. The prospective Private Proponents must be corporations duly registered with the Philippine Securities and Exchange Commission (SEC) *or* its equivalent in the country of incorporation and allowed to enter into JVs and lease and develop lands in the Philippines, and must meet the nationality and ownership requirements under the 1987 Philippine Constitution and other applicable laws and issuances.

   The Private Proponent, and al! its consortium members, must commit to comply with the terms of the JV and lease the LUC Masterplan, the restrictions for the Property as may be imposed by the LUC, all other pertinent government standards such as. but not limited to, the National Building Code, the Fire Code, and other relevant laws, rules, regulations, issuances, and ordinances.

b) Technical Capability. The prospective Private Proponents, by itself or through member-firm/s in case of a consortium, or through consultant(s)/contractor(s) which the prospective Private Proponents may engage for the project, must have successfully undertaken project(s) similar or related to the JV or lease activity being proposed or subjected to selection process. The cost and the relevant period in which the similar projects were undertaken shall be determined by the SC depending on the scope and value of the proposed Project or JV or lease activity. The individual firms or its consultant(s)/contractor(s) may individually specialize on any or several phases of the project(s). A consortium proponent shall be evaluated based on the individual or collective experience of the member-firms and of the consultant(s)/contractor(s) that is engaged for the project.

c) Financial Capability and Eligibility Requirements. Financial capability shall be measured in terms of the ability of the prospective Private Proponents to provide a minimum amount of equity to the JV or lease activity, which shall be determined by the SC depending on the scope and the value of the proposed project. The minimum equity shall be measured in terms of proof of the ability of the prospective Private Proponents or consortium to provide:

   Equity

   i. A minimum amount of equity to the project measured in terms of the net worth of the Private Proponents, or in the case of a consortium, the net worth of the lead member or the combined net worth of members; or

   ii. Set-aside deposit equivalent to the minimum equity required, and

iii. Audited Financial Statement (FS) for the last three (3) years.

Debt

i. Notarized statement/certification from a domestic universal/ commercial bank or any international bank recognized by the Bangko Sentral ng Pilipinas (BSP) attesting that the prospective Project Proponent or members of the consortium are banking with them, and that they are in good financial standing or are qualified to obtain credit accommodations from such banks to finance the project.

d) Acceptance of Criteria and Waiver of Rights to Enjoin JV or Lease Activity. In addition to the above, all prospective Private Proponents shall be required to submit, as part of their qualification documents, a statement stipulating that the Private Proponent:

   i. Has accepted the qualification criteria established by the SC; and

   ii. Waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the LUC or its SC to prevent or restrain the qualification proceedings related thereto, the award of the contract to a successful Private Proponent, and the carrying out of the awarded contract.

e) Consortium. If the Private Proponent is a consortium, it must also submit a copy of the Consortium Agreement, which shall include the following information:

   i. Brief description of the consortium, the individual members of the consortium, and the nature and extent of the participation which may include a statement of the capital of each member in relation to the whole capital or their respective participation or involvement in the proposed project;

   ii. The lead member of the consortium, who is authorized by all the members to represent and sign any and all documents related to this bidding including the agreement with the LUC; and

   iii. Agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.

f) Eligible and Ineligible. The LUC, through its SC, shall, within a maximum period of thirty (30) calendar days after the deadline for submission of eligibility documents, completes the evaluation of the eligibility documents of the prospective JV Partners and determine which among them are "eligible" and "ineligible" using a non-discretionary Pass/Fail Criteria. Within fifteen (15) calendar days after such determination, the SC shall duly inform the prospective Private Proponents in writing of their eligibility or ineligibility. In case of the latter, the grounds for ineligibility must be stated in the notice.

g) Issuance of Tender Documents. The LUC shall make available the related competitive selection documents to all eligible Private Proponents as soon as practicable to provide them ample time to examine the same and to prepare their respective proposals prior to the date of opening of the proposals. The time period from the last day of the issuance of tender documents to the date of opening of the proposal shall not exceed forty-five (45) calendar days. The proposal parameters for the proposed JV or lease activity should be transparent and fair. It should not, in any way, be tailor-made for or be meant to favor or give advantage to a particular Private Proponent.

h) Supplemental Competitive Selection Bulletins and Pre-Selection Conferences.

    i. Responsibility of the Private Proponents. The prospective Private Proponents shall be solely responsible for examining and understanding the requirements and terms and conditions of the selection documents with respect to the cost, duration, and execution/operation of the project as it affects the preparation and submission of its proposal. The LUC shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective Private Proponents from information furnished or indicated in the competitive selection documents.

    ii. Supplemental Notices. On or before the pre-selection conference, a prospective Private Proponent may submit to the LUC a written request for clarification as to any data or requirements or any part of the selection documents. Any substantive interpretation given by the LUC shall be issued in the form of a Supplemental Notice, and be furnished to all prospective Private Proponents. The LUC may also issue Supplemental Notices to all prospective Private Proponents at any time for purposes of clarifying any provisions of the selection documents, provided, that the same are issued within reasonable period to allow Private Proponents to consider the same in the preparation of their proposals.

i) Pre-Selection Conference. The LUC shall conduct a pre-selection conference at least thirty (30) calendar days before the deadline for the submission of proposals. Notwithstanding, the LUC may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV or lease activity; provided, that the principles of fairness, transparency, competition, and accountability are observed.

j) Submission and Receipt of Proposals. Private Proponents shall be required to submit their proposals on or before the deadline stipulated in the "Instructions to Private Sector Entities". For eligible participants, proposals shall be submitted in two (2) separate sealed envelopes, the first being the Technical proposal and the second, the Financial proposal.

i. The Technical Proposal shall contain the following, as far as applicable:

1. Compliance statements with regard to the technical parameters as stated in the tender documents;
2. Operational feasibility;
3. Technical soundness, including proposed project timeline;
4. Preliminary environmental assessment; and
5. Other documents to support the Private Proponent's technical proposal, as may be required by the LUC.

ii. The Financial Proposal shall contain the following, as the case may be:

1. Compliance statements with regard to the financial parameters stated in the tender documents;
2. Proposed cost and financing plan of the JV or lease activity, operation and maintenance cost, the amount of equity to be infused, debt to be obtained for the project, sources of financing, and all other related costs;
3. Other details corresponding to the parameters set by the LUC; and
4. Cost and financing plan of the JV or lease activity.

iii. Proposal Security in the amount to be determined by the LUC, but which shall not be more than ten percent (10%) of the cost of the JV or lease activity subject of the selection process. The proposal security shall be in the form of a bank manager's check or cashier's check issued by a universal or commercial bank. In the case of an OP of an unsolicited proposal, the OP shall post the Proposal Security on the first day of the publication of the IAESCP in the amount and form stated in the tender documents. The Proposal Security shall be valid until the parties' execution of the contract.

iv. The LUC is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV or lease activity.

k) Submission of Late Proposals. Proposals submitted after the deadline for submission prescribed in the "Instructions to Private Sector Entities" shall be considered late, and shall be stamped with the date and time received and be returned unopened.

l) Opening and Evaluation of Proposals

i. Opening of the Envelope for the Technical Proposal. At the date and time of the proposal opening stipulated in the "Instructions to Private Sector Entities," the SC shall open only the first envelope containing the technical proposal and ascertain:

1. whether the same is complete in terms of the data/information required; and
2. whether the same is accompanied by the required proposal security in the prescribed form, amount, and period of validity.

All Private Proponents or their representatives shall be present at the opening of the envelopes containing the Technical Proposal and shall sign a register of the proposal opening.

ii. Evaluation of the Technical Proposal. The evaluation of the first envelope containing the Technical Proposal shall involve the assessment of the technical, operational, and environmental viability of the proposal, vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the competitive selection documents. The SC shall complete the evaluation of the Technical Proposals within thirty (30) calendar days from the date the proposals are opened. Only those proposals that have positively passed the evaluation of the Technical Proposal shall be qualified and considered for the evaluation of the Financial Proposal.

iii. Opening of the Envelope for the Financial Proposal. Only the Financial Proposals of Private Proponents who passed the Technical Proposal evaluation shall be opened for further evaluation. The Financial Proposals tendered by Private Proponents who failed the Technical Proposal evaluation shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification. The SC shall notify the qualifying Private Proponents of the second stage of evaluation of the date, time, and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedure prescribed for the opening of the envelopes containing Technical Proposals.

iv. Evaluation of the Financial Proposal. The evaluation of the Financial Proposal shall involve the assessment and comparison of the Financial Proposals against the financial parameters stated in the tender documents and proposals parameters set by the LUC. The proposed financing plan must show that the same adequately meets the costs relative to the JV or lease activity. The evaluation of Financial Proposals shall be completed by the SC within fifteen (15) calendar days.

v. Simultaneous Evaluation of the Technical and Financial Proposals. Simultaneous evaluation of the Technical and Financial Proposals may be resorted to if the SC determines that the nature of the JV or lease activity requires the appreciation of both the Technical and Financial Proposals as a whole in order to determine the best proposal. In such case, the tender documents shall explicitly state the evaluation procedure. Simultaneous evaluation of the Technical and Financial Proposals shall be completed within thirty (30) calendar days from the date the proposals are opened.

vi. Prescriptive Periods. The periods stated for the evaluation of the Technical and Financial Proposals are prescriptive and directory. The LUC Board, pursuant to the recommendation of the SC, may adjust said periods as may be appropriate for the nature, scope, size, and complexity of the proposed JV or lease activity. Provided, that the principles of fairness, transparency, competition, and accountability are observed.

vii. Rejection of Proposals. Non-compliance with the information required on either the first or second envelope shall be grounds for rejection of proposals.

viii. Withdrawal or Modification of Proposals. Withdrawals or modification of proposals may be allowed upon written notice by the Private Proponents concerned to the SC prior to the time and date set for the opening of the envelope containing the Technical Proposal as specified in the “Instructions to the Private Sector Entities.” No proposals shall thereafter be modified or withdrawn. Proposal modifications received after said period shall be considered late and will be returned unopened. Withdrawal of proposals after the proposal opening date shall cause the forfeiture of the Private Proponent’s Proposal Security.

ix. Right to Reject All Proposals. The LUC reserves the right to reject any or all proposals, waive any minor defects therein, and accept the offer it deems most advantageous to the government.

x. Breaking Tie Bids. In case tie bids occurs under competitive selection or competitive challenge, the procedure for breaking the bids shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.

m) Award and Approval of Contract

i. Recommendation to Award. Within seven (7) calendar days from the completion of the evaluation procedure, the SC shall recommend to the LUC Board the approval of the award to the Winning Private Proponent (WPP). The SC's Memorandum to the LUC Board recommending the award should contain the recommendation, including minutes of negotiation meetings duly signed by all its members, and the SC evaluation/assessment report on the proposals explaining in clear terms the basis of its recommendations.

ii. Decision to Award. Within seven (7) calendar days from the submission by the SC of the recommendation to award, the LUC Board shall approve or reject the same. The approval shall be manifested by signing and issuing the "Notice of Award" to the WPP within seven (7) calendar days from approval thereof. The LUC shall post a corresponding "Notice" on its website declaring the award of the JV or lease contract to the WPP.

iii. Notice of Award. The "Notice of Award" to be issued by the LUC shall contain, among others, an instruction to the WPP to comply with conditions precedent for the execution of the agreement and to submit compliance statements with regard thereto, within fifteen (15) calendar days from receipt of the "Notice of Award" unless otherwise specified or extended by the LUC.

iv. Performance Security. Conditions precedent for the execution of the agreement shall include the posting of a Performance Security in favor of the LUC. The SC shall determine which form of Performance Security it will require, which may be in the form of cash, bank draft, or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank or surety bond callable on demand issued by the Government Service Insurance System (GSIS), or by a surety or insurance companies duly accredited by the Insurance Commission as follows:

1. Cash, Manager's Check, irrevocable letter of credit, bank draft – a minimum of two percent (2%) of the Private Proponent's contribution to the JV activity or the LUC for lease;
2. Bank Guarantee – a minimum of five percent (5%) of the Private Proponent's contribution to the JV activity or the LUC for lease; or
3. Surety Bond – a minimum of ten percent (10%) of the Private Proponent's contribution to the JV activity or the LUC for lease.

Failure to comply with the conditions precedent for the execution of the contract within the prescribed thirty (30) calendar day period or as specified or extended by the LUC will result in confiscation of the Performance Security. Within seven (7) calendar days from receipt of the compliance statements from the WPP, the LUC shall determine the sufficiency of the same, and notify the WPP accordingly.

v. Validity and Return of Proposal and Performance Securities. The execution of the agreement shall be made within the period of the validity of the Proposal Security. The required Proposal Security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the proposals. Unless earlier forfeited, Proposal Securities shall be returned to all Private Proponents upon signing of the agreement by the WPP.

vi. Extension of Validity of Proposals. When an extension of validity of proposals is considered necessary, those who submitted proposals shall be requested in writing to extend the validity of their proposals before the expiration date of the same. However, Private Proponents shall not be allowed to modify or revise the price or other substantial aspect of their proposal. Further, Private Proponents must correspondingly extend the validity of their Proposal Security as a condition for the extension of the validity of their proposals.

Private Proponents shall not refuse such request for extension except on the following grounds:

1. Loss of interest in the Project, and
2. Unforeseen financial meltdown/crisis.

Private Proponents who refuse the request based on these grounds shall not forfeit their Proposal Security.

vii. Single Responsive Bid. A single and responsive bid shall be considered for award if it falls under any of the following circumstances:

1. If, after advertisement, only one Private Proponent submits eligibility documents within the deadline stipulated in the IAESP, and such Private Proponent meets the eligibility requirements and submit a bid which is responsive to the technical and financial requirements;

2. If, after advertisement, multiple Private Proponents submit eligibility documents, in accordance with the provisions of these Guidelines, but only one meets eligibility requirements and such eligible Private Proponent submits a bid which is responsive to the technical and financial requirements;
3. If, after the eligibility check, multiple Private Proponents meet the eligibility requirements but only one submits a bid, and its bid is found to be responsive to the technical and financial requirements; or
4. If, after qualification/evaluation of proposals, only one Private Proponent meets the technical requirements but is not able to comply with financial requirement, and a negotiation of the financial terms/ proposal is conducted and is successful.

viii. Prospective Bidder/s Compliant with the Technical Requirements. In case no technically qualified prospective bidder is able to comply with financial requirements, the LUC may conduct negotiation on the financial terms in accordance with the Guidelines.

ix. Negotiation on the Financial Terms/Proposal under the Competitive Selection Process. In case all the eligible Private Proponents, whose Technical Proposals are rated "passed" are not able to comply with the financial requirements, the LUC shall request said participants to submit new Financial Proposals. Thereafter, the SC shall notify and negotiate with the proponent with the most advantageous Financial Proposal. The Technical Proposal shall remain valid and binding. In the event the SC fails to successfully negotiate with said proponent within thirty (30) calendar days reckoned from the date of notification, the SC shall negotiate with the next ranked most advantageous financial proposal, and so on and so forth, until a successful negotiation has been concluded.

In case of a single technically qualified participant, the LUC may conduct negotiations on the financial terms or on the Financial Proposal and shall conclude said negotiation within fifteen (15) calendar days. The Technical Proposal shall remain valid and binding.

If there is no successful negotiation, the LUC shall conduct another Competitive Selection. In case of a second failure of Competitive Selection, the LUC may resort to a Negotiated JV or lease.

x. Failure of Competitive Selection. There shall be a failure of competitive selection in any of the following instances:

1. No prospective bidder/s is/are eligible;
2. No bids or proposals are received;
3. No prospective bidders/s is/are able to comply with technical requirements; or
4. No successful negotiation on the financial terms/proposal as provided herein.

In the event of a failed competitive selection brought about by the instances stipulated above, the SC shall review the Terms of Reference (TOR) and bidding documents and conduct another Competitive Selection. In case of a second failure of Competitive Selection, the LUC may resort to Negotiated Mode.

xi. Execution/Approval of the Agreement. The authorized signatory(ies) of the WPP and the LUC, shall execute and sign the agreement, within seven (7) calendar days after the LUC notifies the WPP of its compliance with the conditions or requirements precedent to the execution of the contract.

In the event of refusal, inability, or failure of the WPP to enter into contract with the LUC within the time provided therefore, the LUC shall forfeit its Proposal Security. In such event, the LUC shall consider the Private Proponent with the next ranked complying proposal as the LUC, and notify said Private Proponent accordingly. If the next ranked complying Private Proponent shall likewise refuse or fail to enter into contract with the LUC, its Proposal Security shall likewise be forfeited and the LUC shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into. In the event that the LUC is unable to execute the contract with any of the complying Private Proponent, a failure of Competitive Selection will be declared and the JV or lease activity may be subjected to a Competitive Selection again.

xii. Deviation and Amendments to the Agreement. The LUC shall not proceed with the award and signing of the contract if there are material deviations from the parameters, terms, and conditions (PTCs) set forth in the proposal/tender documents that tend to increase the financial exposure, government liabilities and risks, or any other factor that would cause disadvantage to government and any deviation that will cause prejudice to losing Private Proponents. Violation of this provision shall render the award or the signed agreement invalid.

xiii. Other Approvals. The entity tasked under the agreement shall, as may be required under existing laws, rules, and regulations, secure any and all other approvals for the contract, or the implementation thereof. The LUC may provide the necessary assistance to the Private Proponent in securing all the required clearances. The contract shall provide milestones in securing such other approvals required for the implementation of the contract. In case of unsolicited projects, the LUC will ensure that required approvals under existing laws shall be complied with as condition precedents prior to contract effectivity.

xiv. Contract Effectivity. The contract shall be effective upon signing thereof by the Parties unless another date is stipulated therein.

xv. Amendment of Agreement. Any amendment to the agreement by way of extension, variation, or expansion must be executed in writing by the Parties, provided, that such option is incorporated in the agreement and that such right is available to any Private Proponent, bidder, or challenger declared eligible in the Competitive Selection or Challenge process.

n) Negotiated JVs, Leases, and Competitive Challenge. In case of unsolicited proposals, and in all cases where the LUC directly negotiates with the Private Proponent for a proposed JV or lease activity, the negotiated terms shall be subjected to a competitive challenge wherein other Private Proponents shall be invited to submit comparative financial proposals.

1. Competitive Selection Process. The LUC and Private Proponents shall negotiate on the terms and conditions of the proposed JV or lease activity; which negotiations shall, as far as practicable, comply with the same process, requirements, and conditions as in the case of JV or lease proposals solicited through the competitive selection process.

   It is understood, however, that the competitive challenge is limited only to the financial aspect of the project. The technical aspect of the project, as agreed upon during the negotiations, shall be adopted by third party challengers; otherwise, they shall be declared ineligible.

   The process for the conduct of Competitive Challenge, contract awarding and final approval shall also follow the provisions hereof to the extent applicable.

2. Unsolicited Proposals. When the LUC receives a proposal from a Private Proponent for a JV or lease activity under the Guidelines, the SC shall conduct a preliminary evaluation. The preliminary evaluation shall be completed by the SC within thirty (30) calendar days upon submission of complete documents by the Private

Proponent. The SC shall determine on preliminary evaluation the completeness of the proposal and whether the proposed JV or lease activity meets the requirements under the Guidelines. If the proposed JV or lease is not covered under the Guidelines, i.e., the JV or lease is for the public, or public or commercial undertaking, the SC shall return the unsolicited proposal to the Private Proponent with an explanation that the project is outside the scope of the Guidelines and should be pursued under the PPP Code or any other law.

3. Completeness. A complete proposal shall contain the following documents:

   a. Cover letter indicating the basic information of the unsolicited proposal, such as:

      1) Description of the proposed project, its rationale, and objectives;
      2) Land area and location of the proposed property to be leased or used for the JV or lease;
      3) Project implementation schedule; and
      4) Other relevant information.

   b. Company Profile indicating its eligibility:

      1) Articles of Incorporation and By-Laws;
      2) Latest General Information Sheet (GIS);
      3) Audited Financial Statement and Tax Returns for the past three (3) years; and
      4) Consortium Agreement, if by a consortium;

   c. Feasibility/Pre-Feasibility Study as described under the Guidelines;

   d. Draft Contract/Term Sheet as described under the Guidelines; and

   e. Other documents that are needed even if proprietary in nature.

4. Original Proponent Status. Upon completion of the preliminary evaluation, the SC shall recommend to the LUC Board the acceptance or non-acceptance of the proposal. Acceptance of the proposal by the LUC Board confers upon the Private Proponent Original Proponent Status (OPS).

5. Negotiations. The LUC and the Private Proponent shall, within a period of five (5) calendar days from acceptance by the LUC Board, enter into detailed negotiations on the terms and conditions of the proposed JV or lease activity (i.e., legal, technical, and financial components). The negotiations shall be completed within thirty (30) calendar days. The terms of detailed negotiations shall be approved by the LUC Board.

6. Multiple Proposals. Should the parties not agree by the end of the negotiation period, the LUC shall have the option of rejecting the proposal by informing the OP in writing of the grounds for rejection; and, thereafter enter into negotiations with the next highest ranked proponent and so on, if multiple unsolicited proposals have been received by the LUC, until the LUC has conferred upon the Private Proponent OPS. If no Private Proponent has been conferred OPS, the LUC may accept a new proposal from another Private Proponent, or pursue the proposed activity through other arrangements.

   If there is more than one unsolicited proposal submitted for the same project, the LUC may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and offers the most advantageous terms and benefits to the LUC.

7. Certification. Within seven (7) calendar days after the successful negotiation and approval thereof by the LUC Board, the LUC and the authorized representative of the OPS shall issue a signed certification that an agreement has been reached and both agree to submit the proposal to a competitive challenge. Said certification shall also state that the LUC has found the OP/Private Proponent eligible to enter into the proposed JV or lease activity.

8. Selection Documents. After the award of the OPS, the selection documents for the competitive challenge, including the draft contract, shall be prepared by the SC. The selection documents shall be consistent with the tender documents enumerated herein to the extent applicable. The draft contract for the JV or lease shall be reviewed by the LUC Legal Officer.

9. IAESCP. The SC shall then endorse to the LUC Board for approval the draft JV or lease contract. Within fifteen (15) calendar days from the LUC Board approval of the draft JV or lease contract, the SC shall cause the publication of the IAESCP. The IAESCP shall be published in one (1) newspaper of general nationwide circulation and posted continuously in the LUC website starting on the date of advertisement until acceptance. Interested Private Proponents

shall be given thirty (30) calendar days from the last date of publication in a newspaper of general nationwide circulation of the IAESCP to apply for eligibility and to submit a comparative proposal. Notwithstanding, the LUC may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV or lease activity; provided, that the principles of transparency, competition, and accountability are observed.

10. Tender Documents**.** Interested Private Proponent-challengers shall be qualified in accordance with the Guidelines. The tender documents for the competitive challenge shall only be issued to eligible Private Proponents challengers.

11. Right to Match. The Right to Match is an automatic right bestowed upon the OP. If the LUC determines that an offer made by a comparative Private Proponent-challenger other than the OP is superior or more advantageous or responsive to the LUC, the OP shall be given the right to match the superior offer of the challenger, provided the challenger is declared to be eligible and is able to deliver the project based on the negotiated terms. Outbidding by the OP of the challenger's offer shall be measured in such terms as the SC may determine as appropriate taking into consideration the proposal that is most advantageous to the LUC.

12. The OP's matching bid shall be submitted within fifteen (15) calendar days from receipt of notification from the LUC of the results of the competitive challenge. If the OP submits a matching offer within the prescribed period, the JV or lease activity shall be awarded to the OP. However, should there be an unfavorable matching offer or no offer is received from the OP within the prescribed period, the JV or lease activity shall be awarded to the challenger submitting the most advantageous proposal to the LUC. However, if no comparative proposal is received by the LUC challenging the original proposal, the JV or lease activity shall immediately be awarded to the OP.

13. Award. Within ten (10) calendar days from the date of completion of the Competitive Challenge, the SC shall submit its recommendation of award to the LUC Board. Succeeding activities shall be in accordance with the Guidelines.

14. Appeals Mechanism. A Private Proponent aggrieved by the decisions of the SC may, within five (5) calendar days from receipt of the SC decision, seek a Motion for Reconsideration (MR) thereof. The SC shall resolve the MR within five (5) calendar days from receipt. In the event that the SC denies the MR, the aggrieved Private Proponent may appeal the same to the LUC Board by filing

a verified position paper and paying a non-refundable appeal fee of one-half (1/2) of one percent (1%) of the proposed project cost, within five (5) calendar days from receipt of the SC resolution denying the MR. The LUC Board shall act on the appeal within fifteen (15) calendar days from receipt of the appeal. The decision of the LUC Board on the appeal shall be final and immediately executory. If the appeal is not resolved within the said period, the appeal is deemed denied.

8. **Amendments**. The Guidelines may be amended or modified as the case may be, subject to the approval of the LUC Board.

9. **Separability Clause**. In the event that any provision of the Guidelines is held or declared void or unenforceable by final judgment of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.

10. **Effectivity**. The Guidelines and any subsequent amendment or modification thereto, shall take effect immediately upon its complete publication in a newspaper of general circulation, and the Office of the National Administrative Register (ONAR) of the University of the Philippines (UP) Law Center.